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**APR 07 2006**

**OFFICE OF PETITIONS**

In re Patent No. 6,774,439	:	
Fukuzumi et al.	:	DECISION ON REQUEST FOR
Issue Date: August 10, 2004	:	CERTIFICATE OF CORRECTION
Application No. 09/783,023	:	
Filed: February 15, 2001	:	
Attorney Docket No. 01701.00059	:	
	:	

This is a decision on the "REQUEST FOR CERTIFICATE OF CORRECTION," filed April 25, 2005.

The request is **DENIED**.

Patentees are given **THIRTY (30) DAYS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On August 10, 2004, application No. 09/783,023 matured into U.S. Patent No. 6,774,439, with a Patent Term Adjustment of 17 days. Patentees contend that this is in error. Patentees state that the patent should have issued with a revised patent term adjustment of 144 days, as shown in PAIR and on the Issue Notification.

Issuance of a certificate of correction under § 1.322 is permitted if an error in the patent is shown. No error in the patent has been shown. The record has been reviewed, and it is determined that the patent term adjustment indicated in the patent is correct. At the time of the mailing of the Notice of Allowance, the patent term adjustment (PTA) under 35 U.S.C. 154(b) to date was 17 days. The PALM record shows that after

the mailing of the notice of allowance, a period of adjustment of 127 days was entered for Office delay in issuing the patent. See § 1.702(b). However, prior to issuance of the patent, the PTA was corrected to remove the adjustment of 127 days, pursuant to § 1.703(b)(4). Specifically, § 1.703(b) provides that:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 1.191 and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

In this instance, a notice of appeal was filed on October 14, 2003. Subsequently, a notice of allowance was filed on March 22, 2004. This period constitutes 161 days. Thus, the period under 1.702(b) of 127 days could not include this 161 days. As such the net increase in PTA for the Office taking in excess of 3 years to issue the patent is zero (0) days (127 - 161). In view thereof, the patent should have issued with a revised PTA of 17 days.

Since seventeen (17) days of PTA is the correct value for PTA, no certificate of correction will be issued to change the PTA under 37 C.F.R. § 1.322.

Patentees are advised that 37 C.F.R. § 1.705(d) provides the avenue before the Office for requesting reconsideration of the patent term adjustment indicated in the patent based on a dispute of the Office's calculation of the patent term adjustment. Moreover, § 1.705(d) states that "any request for

reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Accordingly, to the extent that the instant request for a certificate of correction should properly be treated as a request under § 1.705(d), and the request was not filed within two months of the issue date of the patent, the request would be dismissed as untimely.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions